

Assembly Bill No. 2825

Passed the Assembly August 31, 2006

Chief Clerk of the Assembly

Passed the Senate August 30, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 17213 of the Education Code, and to amend Sections 21151.2, 21151.4, and 21151.8 of the Public Resources Code, relating to schoolsites.

LEGISLATIVE COUNSEL'S DIGEST

AB 2825, Ruskin. Schoolsites: hazardous emissions and substances: environmental impact.

(1) Existing law, the Leroy F. Greene State School Building Lease-Purchase Law of 1976, provides bond funds for the construction, reconstruction, modernization, and replacement of school facilities and the performance of deferred maintenance activities on school facilities. Existing law prohibits the approval by the governing board of a school district of the acquisition of a schoolsite by a school district unless prescribed conditions relating to hazardous air emissions or hazardous or acutely hazardous materials, substances, or waste are satisfied, including the identification of specified facilities within that district's authority and the making of specified written findings regarding the health risks from the facilities, corrective measures, potential mitigation measures, or a severe shortage of sites.

This bill would revise those provisions to additionally require the identification of both existing and proposed facilities, as defined, that emit hazardous air emissions or handle extremely hazardous substances, hazardous substances, or hazardous waste within that school district's authority, thereby imposing a state-mandated local program by imposing new duties upon school districts. The bill would require an administering agency, city, county, air pollution control district, or air quality management district that receives a specified notification from a lead agency to provide requested information regarding existing and proposed facilities.

(2) The existing California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, or

to adopt a negative declaration if it finds that the project will not have that effect. Existing law requires the governing board of each school district, before acquiring title to property or for an addition to a present schoolsite, to give the planning commission with jurisdiction notice, in writing regarding the proposed acquisition. Existing law requires the planning commission to investigate the proposed site and submit a written report to the school district of its investigation and recommendations regarding the acquisition of the site. A governing board is prohibited from acquiring title until 30 days after the report is received, if the report does not favor the acquisition of the property.

This bill would require the planning commission report to contain specified information regarding whether the site is a hazardous waste site, or contains pipelines that carry specified substances. The bill would impose a state-mandated local program by imposing new duties upon the governing board of a school district and a planning commission with regard to the acquisition of schoolsites.

The bill would also make conforming changes to CEQA with regard to the approval of an environmental impact report or negative declaration for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district with regard to existing and proposed facilities, as defined.

(3) Existing law prohibits a environmental impact report from being certified or a negative declaration adopted for a project involving the construction or alteration of a facility within $\frac{1}{4}$ of a mile of a school that might reasonably be anticipated to emit hazardous air emission or that would handle an extremely hazardous substance or a mixture containing an extremely hazardous substance unless specified event occurs.

This bill would define “hazardous air emission” and “extremely hazardous substance” for purposes of that provision.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 17213 of the Education Code is amended to read:

17213. The governing board of a school district may not approve a project involving the acquisition of a schoolsite by a school district, unless all of the following occur:

(a) The school district, as the lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following:

(1) The site of a current or former hazardous waste disposal site or solid waste disposal site, unless the site was a former solid waste disposal site and the governing board of the school district concludes that the wastes have been removed.

(2) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(3) A site that contains one or more pipelines, situated underground or aboveground, that carry hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood.

(b) (1) The school district, as the lead agency, as defined in Section 21067 of the Public Resources Code, in preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schoolsite is located, pursuant to Section 2735.3 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify permitted, nonpermitted, and

proposed facilities within that district's authority, including, but not limited to, freeways and other busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous air emissions, or to handle extremely hazardous substances, hazardous substances, or hazardous waste. The school district, as the lead agency, shall include a list of the locations for which information is sought.

(2) Each administering agency, city, county, air pollution control district, or air quality management district receiving written notification from a lead agency to identify existing and proposed facilities pursuant to paragraph (1) shall provide the requested information and provide a written response to the lead agency within 30 days after receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with paragraph (1) as to the area of responsibility of any agency that does not respond within 30 days.

(3) If a school district, as a lead agency, has carried out the consultation required under paragraph (1), the environmental impact report or the negative declaration shall be conclusively presumed to comply with paragraph (1), notwithstanding any failure of the consultation to identify an existing or proposed facility or other pollution source specified in paragraph (1).

(c) The governing board of the school district makes one of the following written findings:

(1) Consultation identified no existing or proposed facilities or significant pollution sources specified in subdivision (b).

(2) The existing or proposed facilities or other pollution sources specified in subdivision (b) exist, but one of the following conditions applies:

(A) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school.

(B) The governing board finds that corrective measures required under an existing order by another governmental entity that has jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do

not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.

(C) For a schoolsite with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(D) The governing board finds that neither of the conditions set forth in subparagraph (B) or (C) can be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213. If the governing board makes this finding, the governing board shall adopt a statement of overriding considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(d) As used in this section:

(1) “Hazardous air emissions” means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(2) “Hazardous substance” means any substance defined in Section 25316 of the Health and Safety Code.

(3) “Extremely hazardous substance” means any extremely hazardous material defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

(4) “Hazardous waste” means any waste defined in Section 25117 of the Health and Safety Code.

(5) “Hazardous waste disposal site” means any site defined in Section 25114 of the Health and Safety Code.

(6) “Administering agency” means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) “Handle” means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) “Facilities” means any source with a potential to use, generate, emit or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the State Air Resources Board.

(9) “Proposed facility” means a project where the applicant has submitted an application to the administering agency, city, county, air pollution control district, or air quality management district with jurisdiction over the project.

(10) “Freeway or other busy traffic corridors” means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

SEC. 2. Section 21151.2 of the Public Resources Code is amended to read:

21151.2. To promote the safety of pupils and comprehensive community planning, the governing board of each school district before acquiring title to property for a new schoolsite or for an addition to a present schoolsite, shall give the planning commission having jurisdiction notice in writing of the proposed acquisition prior to determining whether a negative declaration or environmental impact report is required for the project. The planning commission shall investigate the proposed site and within 30 days after receipt of the notice shall submit to the governing board a written report of the investigation and its recommendations concerning acquisition of the site, including any information required pursuant to subparagraphs (A) and (C) of paragraph (1) of subdivision (a) of Section 21151.8 that may otherwise be available by the city or county.

The governing board shall not acquire title to the property until the report of the planning commission has been received. If the

report does not favor the acquisition of the property for a schoolsite, or for an addition to a present schoolsite, the governing board of the school district shall not acquire title to the property until 30 days after the commission's report has been received.

SEC. 3. Section 21151.4 of the Public Resources Code is amended to read:

21151.4. (a) An environmental impact report shall not be certified and a negative declaration shall not be approved for any project involving the construction or alteration of a facility within one-fourth of a mile of a school that might reasonably be anticipated to emit hazardous air emissions, or that would handle an extremely hazardous substance or a mixture containing extremely hazardous substances in a quantity equal to or greater than the state threshold quantity specified pursuant to subdivision (j) of Section 25532 of the Health and Safety Code, that may pose a health or safety hazard to persons who would attend or would be employed at the school, unless both of the following occur:

(1) The lead agency preparing the environmental impact report or negative declaration has consulted with the school district having jurisdiction regarding the potential impact of the project on the school.

(2) The school district has been given written notification of the project not less than 30 days prior to the proposed certification of the environmental impact report or approval of the negative declaration.

(b) As used in this section, the following definitions apply:

(1) "Extremely hazardous substance" means an extremely hazardous substance defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

(2) "Hazardous air emissions" means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by an air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air of a substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

SEC. 4. Section 21151.8 of the Public Resources Code is amended to read:

21151.8. (a) An environmental impact report or negative declaration may not be approved for any project involving the purchase of a schoolsite or the construction of a new elementary or secondary school by a school district unless all of the following occur:

(1) The environmental impact report or negative declaration includes information that is needed to determine if the property proposed to be purchased, or to be constructed upon, is any of the following:

(A) The site of a current or former hazardous waste disposal site or solid waste disposal site and, if so, whether the wastes have been removed.

(B) A hazardous substance release site identified by the Department of Toxic Substances Control in a current list adopted pursuant to Section 25356 of the Health and Safety Code for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code.

(C) A site that contains one or more pipelines, situated underground or aboveground, that carry hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line that is used only to supply natural gas to that school or neighborhood, or other nearby schools.

(D) A site that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor.

(2) (A) The school district, as the lead agency, in preparing the environmental impact report or negative declaration has notified in writing and consulted with the administering agency in which the proposed schoolsite is located, pursuant to Article 1 (commencing with Section 2735.3) of Chapter 4.5 of Division 2 of Title 19 of the California Code of Regulations, and with any air pollution control district or air quality management district having jurisdiction in the area, to identify permitted, nonpermitted, and proposed facilities within that district's authority, including, but not limited to, freeways and busy traffic corridors, large agricultural operations, and railyards, within one-fourth of a mile of the proposed schoolsite, that might reasonably be anticipated to emit hazardous emissions or handle

extremely hazardous substances, hazardous substances, or hazardous waste. The notification by the school district, as the lead agency, shall include a list of the locations for which information is sought.

(B) Each administering agency, city, county, air pollution control district, or air quality management district receiving written notification from a lead agency to identify existing and proposed facilities pursuant to subparagraph (A) shall provide the requested information and provide a written response to the lead agency within 30 days of receiving the notification. The environmental impact report or negative declaration shall be conclusively presumed to comply with subparagraph (A) as to the area of responsibility of any agency that does not respond within 30 days.

(C) If a school district, as a lead agency, has carried out the consultation required by subparagraph (A), the environmental impact report or the negative declaration shall be conclusively presumed to comply with subparagraph (A), notwithstanding any failure of the consultation to identify an existing or proposed facility or other pollution source specified in subparagraph (A).

(3) The governing board of the school district makes one of the following written findings:

(A) Consultation identified no facilities of this type or other significant pollution sources specified in paragraph (2).

(B) The facilities or other pollution sources specified in paragraph (2) exist, but one of the following conditions applies:

(i) The health risks from the facilities or other pollution sources do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school.

(ii) Corrective measures required under an existing order by another agency having jurisdiction over the facilities or other pollution sources will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes a finding pursuant to this clause, it shall also make a subsequent finding, prior to occupancy of the school, that the emissions have been so mitigated.

(iii) For a school site with a boundary that is within 500 feet of the edge of the closest traffic lane of a freeway or other busy traffic corridor, the governing board of the school district determines, through analysis pursuant to paragraph (2) of subdivision (b) of Section 44360 of the Health and Safety Code, based on appropriate air dispersion modeling, and after considering any potential mitigation measures, that the air quality at the proposed site is such that neither short-term nor long-term exposure poses significant health risks to pupils.

(C) The facilities or other pollution sources specified in paragraph (2) exist, but conditions in clause (i), (ii), or (iii) of subparagraph (B) cannot be met, and the school district is unable to locate an alternative site that is suitable due to a severe shortage of sites that meet the requirements in subdivision (a) of Section 17213 of the Education Code. If the governing board makes this finding, the governing board shall adopt a statement of overriding considerations pursuant to Section 15093 of Title 14 of the California Code of Regulations.

(b) As used in this section, the following definitions shall apply:

(1) “Hazardous substance” means any substance defined in Section 25316 of the Health and Safety Code.

(2) “Extremely hazardous substance” means any extremely hazardous substance defined pursuant to paragraph (2) of subdivision (g) of Section 25532 of the Health and Safety Code.

(3) “Hazardous waste” means any waste defined in Section 25117 of the Health and Safety Code.

(4) “Hazardous waste disposal site” means any site defined in Section 25114 of the Health and Safety Code.

(5) “Hazardous air emissions” means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substances identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(6) “Administering agency” means an agency designated pursuant to Section 25502 of the Health and Safety Code.

(7) “Handle” means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(8) “Facilities” means any source with a potential to use, generate, emit, or discharge hazardous air pollutants, including, but not limited to, pollutants that meet the definition of a hazardous substance, and whose process or operation is identified as an emission source pursuant to the most recent list of source categories published by the State Air Resources Board.

(9) “Proposed facility” means a project where the applicant has submitted an application to the administering agency, city, county, air pollution control district, or air quality management district with jurisdiction over the project.

(10) “Freeway or other busy traffic corridors” means those roadways that, on an average day, have traffic in excess of 50,000 vehicles in a rural area, as defined in Section 50101 of the Health and Safety Code, and 100,000 vehicles in an urban area, as defined in Section 50104.7 of the Health and Safety Code.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, except that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs for which a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Approved _____, 2006

Governor